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FEB **0 5** 2007

OFFICE OF PETITIONS

In re Application of

Fukuhara et al.

Application No. 10/615,228 Filed: July 9, 2003

Atty Docket: 3180.0327

DECISION GRANTING PETITION

This decision is in response to applicants' "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER TO 37 CFR § 1.705(b)" timely filed on November 29, 2006 requesting that the Office adjust the PTA from zero (0) days to a determination of six hundred and one (601) at the time of the mailing of the notice of allowance.

Applicants' application for PTA is **GRANTED-in part.** The Office will make an adjustment to the PTA determination from a determination of zero days to a determination of 468 days.

Applicants request that the Office erred in asserting that the response to the restriction requirement was not received in the Office until June 2, 2006. Applicants assert that the actual response date to the restriction requirement occurred on May 12, 2005. Accordingly, applicants assert that the three hundred and twenty-five day reduction by the USPTO is in error. Applicants further assert that the Office further delayed in responding to the May 12, 2005 reply to the restriction requirement until October 3, 2006. Accordingly, applicants assert that the Office missed the requirements of 37 CFR 1.702(a)(2) by a period of 386 additional days. Therefore, applicants assert that the total amount of PTA at the time of the mailing of the notice of allowance is 601 days (215 + 386 = 601). Applicants do not find that there any applicant delays.

Applicants arguments are persuasive to the extent herein determined. A review of the records reveal that Applicant did in fact respond to the restriction requirement within three months. See MPEP 503 which states that postcard stamp which is prima facie proof of date of submission. Accordingly, the 325 day delay by applicant is in error in that the Office entered June 2, 2006 as the reply date rather than the actual date of May 12, 2005. Furthermore, the office erred by failing to provide additional time under 37 CFR 1.702(a)(2) because the Office did not reply to the May 12, 2005 election until October 2,2006. The delay amounted to 386 days as suggested by applicants. However, the USPTO does find that applicants failed to engage under 37 CFR 1.704(c)(8) in that applicant submitted a supplemental "paper" (i.e., the IDS submission of September 22, 2005). Accordingly, the amount of delay under 37 CFR 1.704(c)(8) is 133 days.²

¹Issue fee paid on 11/29/2006.

²Delay began on May 13, 2005 and ended on September 22, 2005.

The Office notes that the IDS submission of September 22, 2005 did not include a 1.704(d) waiver to obviate the reduction under 37 CFR 1.704(c)(8). Accordingly, the correct amount of PTA at the time of the mailing of the notice of allowance is 468 days.

After the mailing of this decision, the Office will forward this application to the Office of Patent Publications for a prompt issuance of the application. Any delays pursuant to 37 CFR 1.702(a)(4) or 1.702(b) will be included in the issue notification letter determination that is mailed to applicants approximately three weeks prior to the issue date.

The Office has assessed the \$200.00 fee associated with this application. No additional fees are required by applicant.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, Office of Patent Legal Administration at 571-272-7757.

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy.

Cc: Copy of adjusted PAIR calculation



PALM INTRANET

Day: Saturday Date: 2/3/2007 Time: 11:24:02

PTA Calculations for Application: <u>10/615228</u>								
Application Filing Date: 07/09/2003	PTO Delay (PTO): 216							
Issue Date of Patent:	Three Years: 0							
Pre-Issue Petitions: 0	Applicant Delay (APPL): 325							
Post-Issue Petitions: 0	Total PTA (days): 468							
PTO Delay Adjustment: 577								

File Contents History								
Number	Date	Contents Description	PTO	APPL	START			
51	02/03/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		1				
50	02/03/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		133				
49	02/03/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	386					
48	02/03/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	325					
41	10/03/2006	MAIL NOTICE OF ALLOWANCE	1		33			
40	10/03/2006	MAIL EXAMINER'S AMENDMENT						
39	09/13/2006	ISSUE REVISION COMPLETED						
38	09/13/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED						
37	09/13/2006	CASE DOCKETED TO EXAMINER IN GAU						
36	09/12/2006	EXAMINER'S AMENDMENT COMMUNICATION						
35	09/12/2006	NOTICE OF ALLOWABILITY						
34	08/09/2006	DATE FORWARDED TO EXAMINER						
33	06/02/2006	RESPONSE TO ELECTION / RESTRICTION FILED		325	22			
32	07/20/2006	MAIL NOTICE OF RESCINDED ABANDONMENT						
31	07/28/2006	NOTICE OF RESCINDED ABANDONMENT IN TCS						
30	07/20/2006	PETITION TO REVIVE APPLICATION - GRANTED						
29	06/02/2006	PETITION ENTERED						
28	ロハシノハシノフハハムロ	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION						
27	05/03/2006	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION						
26	09/22/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED						
25	07/09/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED						

24	09/22/2005	REFERENCE CAPTURE ON IDS		
23	09/22/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
22	04/12/2005	MAIL RESTRICTION REQUIREMENT	215	-1
21	04/11/2005	REQUIREMENT FOR RESTRICTION / ELECTION		
20	04/08/2005	CORRESPONDENCE ADDRESS CHANGE		
19	02/22/2005	CASE DOCKETED TO EXAMINER IN GAU.		
18	07/06/2004	CASE DOCKETED TO EXAMINER IN GAU		
17		IFW TSS PROCESSING BY TECH CENTER COMPLETE		
16	07/09/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
15	02/28/2004	TRANSFER INQUIRY TO GAU		
14	10/08/2003	APPLICATION RETURN FROM OIPE		
13	10/09/2003	APPLICATION IS NOW COMPLETE		
12	10/08/2003	APPLICATION RETURN TO OIPE		
11	10/08/2003	APPLICATION RETURN FROM OIPE		
10	10/08/2003	APPLICATION RETURN TO OIPE		
9	10/07/2003	APPLICATION RETURN FROM OIPE		
8	10/08/2003	APPLICATION IS NOW COMPLETE		
7	10/07/2003	APPLICATION RETURN TO OIPE		
6	10/06/2003	APPLICATION DISPATCHED FROM OIPE		
5	10/07/2003	APPLICATION IS NOW COMPLETE		
4	09/25/2003	CASE CLASSIFIED BY L&R		
3	09/25/2003	CLEARED BY OIPE CSR		
2	08/17/2003	IFW SCAN & PACR AUTO SECURITY REVIEW		
1	07/09/2003	INITIAL EXAM TEAM NN		

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EXPLANATION OF PTA CALCULATION

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